

SERVICE DATE - LATE RELEASE JUNE 8, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36196

DELMARVA CENTRAL RAILROAD COMPANY—  
CHANGE IN OPERATOR EXEMPTION—  
CASSATT MANAGEMENT, LLC D/B/A BAY COAST RAILROAD

Digest:<sup>1</sup> This decision permits Delmarva Central Railroad Company to assume operations on an expedited basis over a line of railroad on the Delmarva Peninsula that had been served by Cassatt Management, LLC d/b/a Bay Coast Railroad.

Decided: June 8, 2018

On May 29, 2018, Delmarva Central Railroad Company (DCR) filed a verified notice of exemption under 49 C.F.R. § 1150.41 to assume operations over an approximately 14.8-mile rail line owned by Canonie Atlantic Co. (CAC) on behalf of the Accomack-Northampton Transportation District Commission (ANTDC) from milepost 30.9 in Pocomoke City, Md., to milepost 45.7 in Hallwood, Va. (the Line). DCR states that the Line has been operated by Cassatt Management, LLC d/b/a Bay Coast Railroad (BCR), but that BCR ceased operations on May 18, 2018, due to personnel departures. Notice of the exemption was published in the Federal Register on June 7, 2018 (83 Fed. Reg. 26,533).

Under 49 C.F.R. § 1150.42(b) a notice of exemption will be effective 30 days after it is filed. Additionally, § 1150.42(e) provides that applicant give notice of its intention to undertake the proposed change in operator to employees on the Line, notify the national offices of the labor unions with employees on the Line, and certify to the Board that it has done so, 60 days before consummation of the transaction. DCR provided that certification on May 17, 2018.<sup>2</sup> Thus, under these rules, the earliest DCR could consummate the transaction would be July 16, 2018 (60 days after the employee notification requirements were met).

However, with its notice, DCR filed a petition to waive the 30-day effectiveness period and the 60-day notice period to allow the exemption to become effective immediately. DCR

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> DCR certified that on May 17, 2018, it posted notice of the transaction at the workplace of the then-current BCR employees on the Line and mailed the notice to each employee's home. DCR further stated that BCR employees are not represented by any labor union.

explains that it connects with the Line at Pocomoke City and “has worked with CAC/ANTDC to address these exigent circumstances” and assume operation of the Line in order to restore the service that ceased on May 18. (Pet. 1-2.) DCR states that there are four active shippers on the Line and that it is prepared to meet the shipping needs of those customers. (Id. at 3.) According to DCR, the need for service is urgent as the cessation of service will have a significant impact on those four shippers. (Id.) DCR states that waiver of the 60-day notice requirement is appropriate because of the exceptional circumstances here.

DCR also states that it has sought to comply with the spirit of the requirement by disseminating the required information “as fully, directly, transparently and quickly as possible.” (Id. at 5.) It also notes that BCR had four employees at the time it ceased operations, one of whom was imminently retiring and two others who “have retired or will be retiring as well.” (Id. at 4.) DCR also states that it will not be hiring any additional employees in connection with its assumption of operations, which it indicated in its labor notice.<sup>3</sup> On May 31, 2018, CAC filed a letter in support of DCR’s notice of exemption and petition for waiver. There were no filings in opposition to the requests for waiver.

For good cause shown, the Board will grant the unopposed petition and waive the 30-day requirement under 49 C.F.R. § 1150.42(b) and the 60-day notice period to the extent necessary to permit the exemption to take effect immediately. While the Board takes seriously the requirements of 49 C.F.R. § 1150.42(e), the circumstances of this case indicate that a waiver to reduce the amount of time the labor notice is posted is appropriate, especially given that it is unopposed and given the negative impact that a prolonged service disruption would have on shippers on the Line. Accelerating the effective date by reducing the 30-day and 60-day notice periods will help ensure the shortest possible break in rail service on the Line.

It is ordered:

1. The petition for waiver is granted.
2. The 30-day provision under 49 C.F.R. § 1150.42(b) and the 60-day notice period under 49 C.F.R. § 1150.42(e) are waived, and DCR’s notice of exemption shall become effective on the service date of this decision.
3. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.

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<sup>3</sup> DCR cites Acquisition of Rail Lines Under 49 U.S.C. 10901 & 10902—Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997), in which the Board explained that the purpose behind the notice requirement is to require an acquiring carrier to give notice of its general intentions in hiring a work force 60 days before consummating a transaction.